

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MEMO ENDORSED

MATTHEW J. FECTEAU,

Plaintiff,

-against-

Case: 7:23-CV-09173 (kmk)

MOTION FOR DEFAULT JUDGEMENT

The CITY OF MOUNT VERNON,
The MOUNT VERNON DEPARTMENT OF BUILDINGS,
The MOUNT VERNON POLICE DEPARTMENT,
SERGEANT MARIO STEWART,
DETECTIVE MONTIKA JONES,
MS. CHARLENE HUMPHREYS

Defendants,

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I, Matthew J. Fecteau, hereby move this Court for a default judgment against the defendants: the City of Mount Vernon, The Mount Vernon Department of Buildings, The Mount Vernon Police Department, Sergeant Mario Stewart, Detective Montika Jones, and Ms. Charlene Humphreys, and in support thereof, respectfully states as follows:

1. This motion is brought under Rule 55 of the Federal Rules of Civil Procedure for a default judgment due to the defendants' failure to plead or otherwise defend in this action, as required by the Rules.
2. This action was duly commenced on October 18th, 2023, to recover damages for violations of my rights under 42 U.S. Code § 1983 and the First, Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. All defendants were served with the summons and complaint on November 8th, 2023, and proof of service was filed with this

Court on November 9th, 2023. Despite being served and the passage of the time allowed for answering, the defendants have failed to respond to the complaint.

3. This Court has jurisdiction over the subject matter and the parties. Proper service was affected upon all defendants, providing this Court with personal jurisdiction.
4. The Clerk of the Court has entered a default against the defendants, as they have failed to plead or otherwise defend against the plaintiff's claims, as required by Rule 55(a) of the Federal Rules of Civil Procedure.
5. I seek damages in the amount of \$850,000, with post-judgment interest at the rate of 8% per annum, along with costs and disbursements of this action. The damages requested are justly due and owing to the plaintiff, and no part has been paid.
6. WHEREFORE, Matthew J. Fecteau respectfully requests this Court to enter a default judgment against The City of Mount Vernon, The Mount Vernon Department of Buildings, The Mount Vernon Police Department, Sergeant Mario Stewart, Detective Montika Jones, and Ms. Charlene Humphreys, for the sum of \$850,000, plus interest at 8% from the date of judgment, costs, and disbursements.

DATED: Mount Vernon, New York
February 6th 2024

Sincerely,

/s/ Matthew J. Fecteau
46 Gramatan Ave
Unit 1036
Mount Vernon, NY 10550
401-225-0541
Matthew.fecteau@gmail.com

On April 30, 2024, Plaintiff filed an Amended Complaint. (See Dkt. No. 56.) The Amended Complaint “renders [the Clerk of Court’s] prior entry of default a nullity and moots [Plaintiff’s] pending motion for default judgment.” *Falls Lake Nat’l Ins. Co. v. DNA Plumbing Contractors, Inc.*, No. 20-CV-2798, 2021 WL 3518279, at *3 (E.D.N.Y. May 4, 2021) (collecting cases), *report and recommendation adopted*, 2021 WL 2702571 (E.D.N.Y. July 1, 2021). Accordingly, Plaintiff’s pending motion for default judgment is denied as moot. *Michalski v. Semple*, No. 16-CV-2039, 2018 WL 571848, at *6 (D. Conn. Jan. 28, 2018) (“Because the Court has granted [the plaintiff’s] motion to amend the First Amended Complaint and accepted his Second Amended Complaint, any entry of default against [the d]efendants for their failure to plead would be rendered moot at this juncture.”); *Int’l Bhd. of Elec. Workers Local Union No. 1249 Pension & Ins. Funds by Dafor v. S. Buffalo Elec., Inc.*, No. 15-CV-0682, 2017 WL 2483811, at *2 (N.D.N.Y. June 8, 2017) (“Plaintiffs’ motion for default judgment . . . must be denied as moot because it was filed prior to the operative pleading in this action.”); *Gladstone v. Health Career Acad.*, No. 15-CV-517, 2016 WL 81789, at *2 (D. Conn. Jan. 7, 2016) (“[T]he Court’s granting of [the p]laintiff’s motion to amend her complaint renders moot both her motion for default judgment as well as the Clerk of Court’s earlier entry of default In other words, there can be no import to [the d]efendants’ defaulting as to the initial complaint because the amended complaint supersedes the original and renders it of no legal effect.” (quotations and citations omitted)).

The Clerk of Court is respectfully directed to terminate the pending motion. (See Dkt. No. 27.)

SO ORDERED.



5/1/2024